

**Harpswell Planning Board Meeting**  
**Minutes of December 18, 2002**  
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**Approved 1-15-03**

**Attendance:** James Henderson-Chairman, John Papacosma-Vice-Chairman, Howard Nannen, Don Rogers, Dorothy D. Carrier, Sam Alexander-Associate, Noel Musson-Planner, Karen O'Connell-Recording Secretary.

The meeting had been advertised in the Times Record, videotaped, broadcast live on Harpswell TV, and recorded. In the temporary absence of Chairman Henderson, Vice Chairman Papacosma called the meeting to order at 6:30 P.M., introduced above members and staff and led the pledge of allegiance. Papacosma then reviewed general Board procedures and the agenda for the evening. Papacosma indicated proposals are presented, then public comment is requested and finally the Board deliberates on the matter. Papacosma appointed Sam Alexander a voting member for this meeting. Howard Nannen recused himself from participating in the Darling agenda item.

**Approval of Minutes - Motion - The minutes of November 20, 2002 were approved as written. (Motion by Carrier and seconded by Rogers - Carried 5-0)**

**02-12-01 Darling Marina: Owners Peter and Jeffrey Darling, Reconsideration of Planning Board Decision regarding Parking Plan, Commercial Fishing I, Tax Map 64-10, Oakhurst Island Rd.**

**Applicant Presentation**

Applicant Peter Darling indicated that this matter had been sent back to the Planning Board by the Board of Appeals. He indicated that the floats at his Marina had all been in place prior to 1990 and should therefore be grandfathered under the Harbor and Waterfront Ordinance and that because he was grandfathered, no parking plan should be required.

Papacosma asked Darling how he could assure the Planning Board that the floats were in place since that time. Darling responded that the last floats built were in 1990 stating that there were three built in 1990 and the rest were built prior to that. Darling indicated he did not have pictures from that time and because he built the floats himself all he might have is a lumber bill or something like that.

Papacosma asked if there were any other person present who could either comment on or verify that the floats have been there since 1990. Jeffrey Darling responded that all the floats were there prior to 1990. He indicated they had just wrecked a few floats that were built in the 1970's. Darling indicated he did not think anyone could dispute the existence of the floats. Papacosma indicated that the burden to provide evidence of the floats existence at the time stated is on the applicants. Darling responded they had a number (2 or 3) people testify at the Appeals Board meeting about the use of the floats and that the original application package had 17 or 18 affidavits about the use of the floats. Darling stated that this is why the decision had been returned to the Planning Board by the Board of Appeals.

Papacosma indicated he read the Appeals Board minutes and it indicated that the Darlings had contended with some supporting evidence that all of their slips were in existence before 1991 (Ordinance) enactment and therefore were not subject to the parking requirement and the Board of Appeals indicated if this was true, the parking condition requirement could not be imposed. However, Papacosma noted that the Appeals Board did not indicate with specificity that they were satisfied with the evidence and the Appeals Board referred the matter back to Planning Board to determine whether the slips were grandfathered and the Planning Board must begin over to make this determination.

Carrier noted she had not heard any evidence to say the floats were not there before 1990. She indicated the Darlings were saying they were there before 1990 and she believed someone would have to come forward to indicate evidence that is contrary.

Musson then clarified the issue of confusion over a 1995 date which was a mistake on the application and noted the 1995 date had been mistakenly used as that was the date the property came into the Darling's name. Musson noted it was clarified that this date should have been pre 1991.

Papacosma asked about testimony of witnesses at prior hearings and particularly the Board of Appeals hearing of September 25, 2002. Darling indicated this testimony should be in the minutes. Some of this record of public testimony in regard to the Darling matter found in the minutes of the Board of Appeals (9-25-02) was then reviewed by the Board. Sam Alexander noted reference in these Minutes to 17 letters and Darling clarified that these letters had been submitted with the original plan (some time ago) and should be on file.

Rogers made reference to other Marinas with no parking plans and there was a brief discussion about

parking requirements. Musson suggested that the Board should address the issue of grandfathering first and parking plans second. At this point Jim Henderson arrived and assumed the chair after brief update by Papacosma indicating the Board needed to determine on the issue of grandfathering and that there was some testimony and notarized letters regarding the floats from the records of previous meetings. Papacosma indicated he had not seen these letters previously.

**Public Comment** - The Board asked if there were other public comments.

Selectman George Swallow indicated it should be clarified and he wanted to remind the Planning Board that the Darling Matter was once before the Selectmen and that the issue is the number of rental slips and moorings and not the number of floats.

Henderson indicated he felt it was important to review the previous testimony and see if there was specific reference to rental slips and moorings. Henderson indicated the previous letters do not quite hit the mark as they do not specify rental slips/moorings. Henderson asked if there was any evidence about rental slips or moorings.

Applicant Peter Darling responded by indicating that there is specific reference to slip rental in testimony by Vincent. (See Board of Appeals minutes of 9-25-02 page 6)

### **Board Discussion and Vote -**

Henderson asked how Darling could give evidence about the number of slips and rentals in place historically. Sam Alexander indicated a key point is the determination of grandfathering from the Harbor and Waterfront Ordinance. Swallow indicated it was clarified at previous hearings that rental slip does not require that dollars be exchanged and sometimes people tie up as part of a bartering arrangement.

Darling indicated that the original plan of several years ago shows the rental slips and moorings. Papacosma indicated the Board could agree that the "facility" was in place before 1991 and the issue is whether any slips or moorings have been added since then. Darling indicated the marina has been in place before 1991 and was doing rental as far back as 1972. Darling indicated he was operating a Marina prior to the request for an approval and that he had requested the approval after the fact.

Henderson indicated that the Board could possibly make the determination of the existence of the Marina as grandfathered and then make some determination of an appropriate or acceptable parking plan without being held to the 1991 Ordinance formula for parking. Peter Darling noted that in the original parking plan, prepared by Beverly Wallace, and registered in the Cumberland County Registry of deeds, the number of Parking spaces is 14 or 15. Henderson indicated he recalled the Selectmen bounced this back as not following the formula.

Selectman George Swallow provided a brief history of the Darling matter indicating that the Planning Board originally placed the condition that the parking plans meet requirements of Harbor and Waterfront which was administered by the Board of Selectmen. The Selectmen sent the matter back to the Planning Board and then it was appealed to Board of Appeals who sent the matter back to Planning Board. Henderson summed up saying this has all occurred because there was question about the Marina being grandfathered.

Henderson indicated the Board needs to make a finding on the grandfathering and then make an approval on some type of parking arrangement. Henderson suggested the following motion.

**Motion -The Planning Board finds that sufficient evidence has been presented that the existing number of slips does not come under the requirements of the Harbor and Waterfront Ordinance in terms of the one and a half slips as the use is grandfathered due to its existence prior to the effective date of Harbor and Waterfront Ordinance. (Motion by Alexander and seconded by Don Rogers - carried 5-0)**

Henderson indicated the Board should agree to a parking plan. Musson indicated the next step as noted in his memo to the Board would be to review the parking plan under site plan review. Carrier clarified that the rule of one and a half parking spots was not now required but an "adequate" parking plan was required. Swallow noted the parking plan that was in the plan was withdrawn by Darling and that is what caused the site plan to be in violation. Darling noted part of the historic confusion related to a mistaken belief that some of the parking spaces were on a Town owned road later proven to be a mistake. Henderson noted the Board could review the earlier plan dated 9-05-01 and the Board would want to assure sufficient space to turn around by abutters.

Henderson asked if Darling had any questions or changes to a previously submitted plan on file. Darling indicated that some of his floats come out of the water in the winter and this takes up space in the lot. Henderson indicated this could be accounted for in any approved plan.

**Public Comment -**

Brian Soper reviewed the earlier presented parking plan stating it as showing 31 spaces and he indicated this plan does not allow him to turn around. Soper indicated parking spaces on the plan designated one, two, three, and four are in an area where he needs to be able to turn his trucks. He indicated Darling also uses the same area to turn his trucks. Soper indicated this drawing is a bit skewed. Soper indicated the spaces in front of the wharf where trucks turn have been settled by the courts. Soper indicated he had no interest in the Darling Parking plan other than his being able to turn his trucks around in the four spaces by the wharf.

**Applicant Presentation continued -**

Darling responded that the highest number of spaces traditionally used is 15 spaces at the height of the season. Darling indicated he did not feel there was a need for a parking plan. Rogers asked why there was a need for a parking plan and Henderson indicated that site plan review required one. Musson indicated traditionally marked parking spaces had not been required and indicated there could be a parking plan without such specifics in such cases. Darling repeated he did not feel he needed any parking plan. Henderson and Musson indicated without a plan of some type of documentation there could be potential for future problems being raised.

**Public Comment**

Selectman Swallow indicated this matter had gone through a site plan review some time back and access and egress were necessary. Swallow indicated that the site plan review was also due to a change of use from Commercial Fishing to a Marina. Musson indicated that adequate spaces are necessary rather than specifically noting the spaces.

**Board Discussion and Vote -**

Papacosma indicated the activity in this area has gone on for 30 years. Darling indicated he still did not see why he had to have a parking plan. Musson indicated if all could agree what was on paper as a parking plan that would settle the matter as long as there was a condition about access and egress. Darling indicated there were other places that trucks could maneuver besides by his wharf and he had seen it occur just recently. Musson indicated that a statement needs to be made about adequate spaces on the plan. Henderson indicated he wanted some information on the record as to parking.

Darling indicated that roughly 5 people are going in and out on boats on any day. Sam Alexander disagreed on the need for a parking plan on a grandfathered property and had concern over setting a precedent by requiring a parking plan under a grandfathered use.

Henderson indicated if they are not required to have a parking plan, there is a need to determine with some back up, that there is "adequate" parking. Rogers indicated there is concern for the abutter to make sure that this person can come and go. Soper agreed there is no need to put a number on the cars that can be parked, however, but how they are parked.

Selectman Swallow indicated that this matter was impacted by "change in use". Henderson indicated the Board had once approved a parking plan. Carrier indicated there was an Order which indicates that the Planning Board shall determine design and layout of the parking lot. This attachment was determined to be a Selectman's Order. The Board of Selectmen had not received any testimony about the existence of the rental slips prior to the Harbor and Waterfront Ordinance.

Henderson was concerned that if the applicant did not want to have this plan how the Board could require it. Papacosma responded that if Harbor and Waterfront does not apply then there is default to the Site Plan Review Ordinance. The Board concluded that the applicant is in violation of Site Plan Review unless there is a determination on parking. Musson indicated the key area is whether there are adequate spaces and Carrier indicated the issue is to have some explanation of adequate.

Selectman Swallow indicated at the original site plan review there appeared to be 15 spaces, but that was replaced with a different plan.

Musson then reviewed earlier files to be able to show the original plan to the Board. Musson located a May 2, 2001 plan submission and there was documentation that the Planning Board had approved a parking plan in keeping with Section 15.7 and based on site visit and a condition that there is a requirement for parking blocks. After discussion of the previous Board Approval in 2001 of the parking plan at the site, the following

motion was recommended. **Motion - The Board determines that adequate parking space and room for entrance and exit does exist for the business and the Board finds that parking conditions meet the requirements of Section 15.7 of the Site Plan Review Ordinance based on the Board's observations and the Board reaffirms its original decision of May 2, 2001. (Motion by Henderson and seconded by Rogers - Carried 5-0)**

Henderson indicated there is a need for specifics on parking plans and if existing Marinas expand, more information is needed. Henderson noted that applicants must present the information that may already be in the record that supports their case and not rely on statements that the information is in previous records somewhere. Musson indicated he is working with applicants to be complete.

#### **Planner Update -**

Noel Musson indicated he would be presenting to the Board information on proposed ordinance changes regarding historic structures, campgrounds, flood plain and forested wetlands. Musson indicated he would like to have Board comments on the proposals before the final draft is prepared for a public hearing. Musson noted he is contacting people who own historic sites which may be identified in the Town's comprehensive plan

#### **Board Discussion**

Standards for Evidence/Burden of Proof - Howard Nannen raised the issue of possible need to consider establishing some standards for evidence when applicants appear before the Board. There may need to be a standard for preponderance of evidence on a particular point. Musson indicated he generally instructs applicants on what they need to present and he is working to improve this process so that meetings go smoothly. Papacosma indicated the complete trail of evidence was not before the Board in this evening's case. Alexander indicated there was little specificity of evidence on the historic numbers of slips.

Policy Issue - Recreational Uses and Commercial Fishing - There was a brief discussion about Marinas and Commercial Fishing areas and "live underwater storage" and shell fishing which can be impacted by boat limits related to Marina activity. Swallow indicated that historically, all Marinas were put into Shorefront Business District. Papacosma indicated he believes there may be mixed uses occurring. The Board agreed this area may need to be further addressed.

**Motion to Adjourn - The meeting was adjourned at 8:25 PM (Motion by Carrier and Seconded by Henderson - Carried 5-0)**

**Respectfully Submitted,**

**Karen O'Connell, Recording Secretary**